PUBLIC PROSECUTOR v. S.R.N. PALANIAPPAN & 2 OTHERS.

[Orig. Cr. Juris. (Spenser-Wilkinson, J.) August 19, 1949]

[K.L. — Cr. Misc. Application No. 14 of 1949]

Contempt of Court — Publication — Newspaper — Case in question still sub-judice — Scandalous attack on a Judge of the High Court.

In this case on the application of the Public Prosecutor the respondents were ordered to appear before the High Court to show cause why an order of attachment or committal be not made against all or any of them in respect of an alleged contempt of Court contained in an article in the newspaper Tamil Nesan appearing in its issue of the 9th of June, 1949. The first and second respondents were the proprietors and the third respondent was the editor.

In March, 1949, one Ganapathy was charged before the High Court in Kuala Lumpur with carrying arms, an offence punishable, under the Emergency Regulations, with death. He was found guilty of this charge and sentenced to death; he appealed to the Court of Appeal and his appeal was dismissed; and His Highness the Sultan not having exercised his prerogative of mercy, Ganapathy was duly executed on the 4th May, 1949. On 2nd and 3rd March, 1949, one Sambasivam was charged before the High Court in Johore of carrying arms and was duly tried by a Judge with the assistance of two Assessors. At the conclusion of the trial the Assessors expressed their opinion that the accused was not guilty, and as the learned trial Judge disagreed with that opinion, there had to be a fresh trial under the provisions of section 198(ii) of the Criminal Procedure Code. The re-trial of Sambasivam was held at Johore Bahru on the 21st and 22nd March, 1949, before a different Judge and different Assessors. At the conclusion of the retrial both the Assessors expressed their opinion that the accused was guilty and as the learned trial Judge agreed with that opinion Sambasivam was duly convicted and sentenced to death. He appealed to the Court of Appeal and his appeal was dismissed, whereupon he made application to the Privy Council for special leave to appeal to His Majesty in Council which leave has been granted. That appeal to the Privy Council is, therefore, still pending.

The article referred principally to the case of Sambasivam and suggested that the Indian Government should take political action in London to prevent Sambasivam's execution without awaiting the result of the appeal to the Privy Council. It stated that, opposing the jurors' verdict of Sambasivam being not guilty, the judge sentenced him to death; and it also stated that Ganapathy was hanged because owing to lack of experience of the procedure, it was impossible to intervene and get justice done.

Held, that the article, taken as a whole, is a serious and deliberate attack upon the course of justice as administered by the Courts here and it contains a wholly unfounded attack upon the Judge who, in his judicial capacity, sentenced Sambasivam.

Cases referred to:—

(1) *Ambard v. Attorney-General for Trinidad and Tobago* (1936) A.C. 322.

(2) *McLeod v. St. Aubyn* (1899) A.C. 549.

(3) *Public Prosecutor v. The Straits Times Press Ltd.* (1949) M.L.J. 81.

(4) *Debi Prasad v. Emperor* (1943) A.I.R. P.C. 202.

(5) *Dunn v. Bevan* (1922) 1 Ch. 276.

(6) *Rex v. Davies* (1906) 1 K.B. 32.

APPLICATION FOR ATTACHMENT FOR CONTEMPT OF COURT.

Foster Sutton, Public Prosecutor, in person.

R. Ramani for the Respondents.

Cur. Ad. Vult.

Spenser-Wilkinson, J. : — By an Order of Court made on the 1st July, 1949, upon the application of the Public Prosecutor the respondents were ordered to appear before this Court to show cause why an order of attachment or committal be not made against all or any of them in respect of an alleged contempt of Court contained in an article in the newspaper Tamil Nesan appearing in its issue of the 9th of June, 1949. The first and second respondents are the proprietors and the third respondent is the editor, printer and publisher of that newspaper. The first respondent is in India and has not been served with these proceedings and was not, therefore, before me at the hearing. The second and third respondents were served with the Order Nisi on the 5th July, 1949.

In order fully to understand the possible implications of the article complained of it is necessary to consider the events which were the subject of the comments therein. In March, 1949, one Ganapathy was charged before the High Court in Kuala Lumpur with carrying arms, an offence punishable, under the Emergency Regulations, with death. He was found guilty of this charge and sentenced to death; he appealed to the Court of Appeal and his appeal was dismissed; and His Highness the Sultan not having exercised his prerogative of mercy, Ganapathy was duly executed on the 4th May, 1949. On 2nd and 3rd March, 1949, one Sambasivam was charged before the High Court in Johore of carrying arms and was duly tried by a Judge with the assistance of two Assessors. At the conclusion of the trial the Assessors expressed their opinion that the accused was not guilty, and as the learned trial Judge disagreed with that opinion, there had to be a fresh trial under the provisions of section 198(ii) of the Criminal Procedure Code. The re-trial of Sambasivam was held at Johore Bahru on the 21st and 22nd March, 1949, before a different Judge and different Assessors. At the conclusion of the re-trial both the Assessors expressed their opinion that the accused was guilty and as the learned trial Judge agreed with that opinion Sambasivam was duly

convicted and sentenced to death. He appealed to the Court of Appeal and his appeal was dismissed, whereupon he made application to the Privy Council for special leave to appeal to His Majesty in Council which leave has been granted. That appeal to the Privy Council is, therefore, still pending.

I do not think it necessary or desirable to set out the whole article in this judgment. It refers principally to the case of Sambasivam and suggests that the Indian Government should take political action in London to prevent Sambasivam's execution without awaiting the result of the appeal to the Privy Council. It states that, opposing the jurors' verdict of Sambasivam being not guilty, the judge sentenced him to death; and it also states that Ganapathy was hanged because owing to lack of experience of the procedure, it was impossible to intervene and get justice done. It will be observed from the facts stated in the preceding paragraph that Ganapathy was executed after a fair trial in accordance with the law of this country and that the judge who sentenced Sambasivam to death did so in agreement with the opinions of both Assessors.

The notice of motion upon which these proceedings are founded alleges that the article in question constitutes a contempt of Court upon the following two grounds :—

(i) that the case referred to in the article being at the time of publication thereof still *sub-judice,* the publication and distribution of the issue containing the said article tended to interfere with the fair disposal of the said Petition to His Majesty in Council, and

(ii) that the article or part thereof contained a scandalous attack upon a Judge of this Honourable Court and thereby was calculated to bring the Court into contempt.

When the second and third respondents appeared before me to show cause the learned Public Prosecutor indicated that he would not proceed with the first ground above set out because he felt that it could not be seriously argued that an article in a Tamil newspaper published in this country could have any effect upon an appeal to His Majesty in Council. The only point I have to decide, therefore, is whether the article in question is a contempt of Court in that it tends to bring the administration of justice in this country into disrepute or is an attack upon a judge in his judicial capacity.

Put shortly the contentions of Mr. Ramani, who appeared for the second and third respondents, were that the article in question was not a contempt of Court, or alternatively that if it could be held to be a contempt of Court it was not of a sufficiently serious nature to justify summary proceedings of the present nature. He argued that the statement in the article to the effect that the trial Judge had condemned Sambasivam to death contrary to the opinions of the jurors was merely an unfortunate error arising out of confusion between the first trial and the re-trial, and that the gist of the article was simply to urge the Indian Government to bring influence to bear along political channels.

Mr. Ramani cited a number of English authorities, the most important of which are the cases of *Ambard v. Attorney-General for Trinidad and Tobago*[1] and *McLeod v. St. Aubyn*[2]. Both these cases were cited and discussed in the only local case which has any bearing on the present matter, *Public Prosecutor v. The Straits Times Press Ltd.*[3]. I need not, therefore, add anything to the comments I made upon them in my judgment in that case. I made the following remarks in the same case regarding the application of English authorities to cases of this kind in this country :—

> I would hesitate to follow too closely the decisions of English Courts on this subject without first considering whether the relevant conditions in England and this country are at all similar. Quite apart from the present emergency in this country, I do not think it could be suggested that the development of the Press, the general standard of education or the composition of the general public in the two countries are at all comparable and it may, therefore, be necessary to take a stricter view here of matters which pertain to the dignity of the Courts and the impartial administration of justice than would be taken at the present time in England. There is, moreover, authority for the proposition that in applying the law of contempt the Court will not lose sight of local conditions.

The decision in the *Straits Times* case was that the letter there in question constituted a contempt of Court not only as tending to prejudice the fair disposal of subsequent proceedings but also as reflecting upon the administration of justice by the Court. It is, therefore, an authority for the view that, even where proceedings are not actually pending there can be a contempt of Court if there is a reflection upon the administration of justice.

Two other cases cited by Mr. Ramani support this view. The first is *Debi Prasad v. Emperor*[4]. In that case it was stated that cases of contempt which consist of "scandalising the Court itself" are fortunately rare and require to be treated with much discretion. With respect, I entirely agree with that dictum; but I would point out that all that such case decides is that where a Judge is defamed in his personal capacity he has the

ordinary remedies for defamation and that, therefore, proceedings for contempt are inappropriate. The second case is that of *Dunn v. Bevan*[5]. That was a case which differed greatly from the one before me, and it is to be observed that in his judgment Sargant J. says :—

> I do not deal, of course, with the case of a report which amounts to scandalising the Court by making attacks upon the judge who presided at the trial.

And later on in the same judgment he says :—

> It seems to me that if the proceedings in a Court are ended, then, **unless there is an attack on the Court itself**, the mere making of statements as to the proceedings must be dealt with by way of the ordinary law of libel or slander.....

There is, therefore, ample authority for the proposition that publications which contain attacks upon the judges in their judicial capacity or which tend to bring into contempt the administration of justice generally are contempts of Court even though proceedings are not pending. The fact that this form of contempt of Court is rare does not in any way affect the position.

Mr. Ramani argued strenuously that there was no intention in this article or on the part of the respondents to impugn the administration of justice or to criticise the Judge. What is more important, however, than the intention of the writer is the effect upon the reader, and I am quite satisfied that this article must have been read by the ordinary man in this country as an indication that there had been a failure of justice on two occasions and that, in the case of Sambasivam, the Judge who tried the case deliberately condemned him to death in opposition to the verdict of the jury. Although the word "jurors" is used possibly because there is no really suitable word in Tamil to describe Court Assessors this does not in any way lessen the effect upon the public mind of the words actually used. And upon Mr. Ramani's own submission as to the general purport of the article, it implies, as it seems to me, that the administration of justice in this country is such that it is necessary to use political influence in order to set it right.

The Public Prosecutor's contention was that the natural and ordinary meaning of the article was to suggest that justice had not been done in the case of Ganapathy; that if it were not possible to obtain justice at least in the case of Sambasivam the British would be considered the inveterate enemies of humanity; that if Sambasivam's appeal proved unsuccessful he would be executed with indecent haste; and that one of the reasons why justice was not done in the case of Sambasivam was that the Judge who tried him sentenced him to death in the teeth of the verdict of a jury that he was not guilty. He further contended that such of these suggestions as are not actually expressed were deliberately intended by the writer of the original article to be implied by the reader, and that the respondents, having published it, must accept full responsibility for the results.

The Public Prosecutor quoted a passage, which I think contains the principle upon which I should be guided in a case of this kind. It is from the judgment of the Court in *Rex v. Davies*[6] where part of an undelivered judgment of Wilmot C.J. is quoted with approval as follows :—

> Attacks upon the judges, he says, 'excite in the minds of the people a general dissatisfaction with all judicial determinations.....and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction of justice, and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the judges as private individuals, but because they are the channels by which.....justice is conveyed to the people. To be impartial and to be universally thought so are both absolutely necessary for the giving justice that free, open, and unimpaired current which it has for many ages found all over this kingdom.'

I desire to adopt these words as being particularly applicable to criticisms of the administration of justice by the Courts of this country at a time of emergency such as the present when, as a result of the continued defiance of the forces of law and order by bands of armed terrorists, stringent emergency measures have had to be enacted and enforced; so that it is more than ever essential that the confidence of the community in the Judges and in the administration of justice by the Courts should be sustained at the highest pitch.

In my opinion the article before me, taken as a whole, is a serious and deliberate attack upon the course of justice as administrered by the Courts here and it contains a wholely unfounded attack upon the Judge who, in his judicial capacity, sentenced Sambasivam and, therefore, constitutes a serious and punishable contempt of Court.

It remains to consider what the punishment should be.

Because the second and third respondents expressed their regrets and apologised in their affidavits Mr. Ramani suggested that, his clients having followed the course adopted by the respondents in the *Straits Times* case, I should adopt the course which I adopted in that case of inflicting no punishment upon the respondents.

I am unable to adopt this view. I would point out, in the first place, that although the Order Nisi

was served on these two respondents on the 5th of July no attempt was made to tender any apology to the Court until the 29th July. The apologies, therefore, can scarcely be said to have been immediate, as they were in the previous case. Secondly, in giving judgment in that case I stated that I confined myself to ruling that the letter there in question constituted a punishable contempt of Court having regard to the possibility of future cases. The letter in that case was not so serious a contempt as the article now before me, and as there had not, so far as I am aware, been any previous ruling in this country on the subject there was perhaps some reason for the Press at that time to be in doubt as to what constituted a contempt. My decision in that case should have removed those doubts. The respondents have ignored the lesson, which they could and should have learned, from the proceedings against the Straits Times Press Limited in August of last year.

There is one other matter upon which I must touch on not only because it concerned an interpreter attached to this Court, but also because it has some bearing upon the question of the relative treatment of the two respondents. The second respondent, in his affidavit, having explained that he normally takes no part in the publication or control of the newspaper and that he was unaware of the publication of this particular article expresses his regret and apologises to the Court in case the Court should hold that the publication constitutes a contempt. Although he does not expressly admit that the publication is a contempt he nowhere in his affidavit denies it. The third respondent, on the other hand, having quite properly set out in his affidavit the circumstances which led to the publication of the article in question, proceeds in the 9th paragraph to attack the translation of the article made by the Court Interpreter and to put forward his own English version of certain parts of it in an endeavour to tone down some of its more glaring passages. At the hearing before me Mr. Ramani applied for leave to call the Court Interpreter as a witness and, the Public Prosecutor not objecting, I allowed this to be done. At the conclusion of the interpreter's evidence Mr. Ramani stated that he was content to found his arguments upon the Court's translation. I desire to make it clear that after hearing the evidence of the Court Interpreter I was satisfied that the interpreter's translation of the article was a fair and accurate one. Moreover the translation of such a document by a Court Interpreter to the best of his ability in the ordinary course of his duties is, in my opinion, much more likely to represent the meaning which the article would convey to the ordinary reader, than a translation put forward by one of the interested parties in an endeavour to minimise his liability. I must add that, even if the third respondent's translation of those parts of the article that he translated were accepted, it would make no difference to my view of this case; and this attempt to slur over the more offending passages detracts somewhat from the value of the third respondent's apology.

In all the circumstances, taking into consideration that both these respondents have tendered apologies, I have decided that the proper course will be the imposition of a fine rather than imprisonment. The second respondent will pay a fine of $750; and the third respondent, whose apology is in my view less unqualified than that of the second respondent, will pay a fine of $1,000. In addition, each of the respondents will pay half the costs of these proceedings, which I fix at $250.00.

Respondents Fined.

SINGAPORE REPORTS.

TAH KAH JOO v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) August 12, 1949]

[Singapore — Magistrate's Appeal No. 53 of 1949]

Common Gaming Houses Ordinance (Cap. 30), S. 4(c) — Distinction between the words "kept or used for gaming" and the words "kept for habitual gaming".

In this case the accused was charged as follows:—

That you on or about 12th February, 1949, at No. 44 A, Joo Chiat Road, Singapore, did assist in the management of a place, to wit the Cathay Club, kept as a common gaming house, and thereby committed an offence punishable under Section 4(c) of the Common Gaming Houses Ordinance (Cap. 30).

The Cathay Club was a registered society having as its avowed object the provision of social facilities for the members. The Club was kept under observation for several days during the Chinese New Year Festival. The raid was carried out on the 12th February, 1949. A Detective gave evidence that he took part in the games of 'Pai Kow' for money on the 10th, 11th and 12th February. Other games were also being played. An Informer also gave evidence to the effect that he had taken part in games of 'Pai Kow' on seven consecutive evenings up to and including the night of the raid. Another witness deposed that he went to the Club to gamble on three or four days between the 1st and 15th day of the Chinese New Year, including 12th February.

The learned Magistrate in one of his grounds of judgment said: "The Club was not open to the public or to any class of the public. Certain non-members, however, who were known to the President of the Club were able to make use of it during the period with which the case is concerned. I did not find that this changed the essentially private nature of the Club." He further found that on each of the days concerning which evidence was given by witnesses the major activity going on in this Club was gaming for money. Accused took part on each occasion and collected 3 cents in $1/- on each game of 'Pai Kow'. The accused was convicted and fined $2,000/-.

Held, that to find that a place is kept for habitual gaming one should consider its activities for a considerable period. If during that period substantial activities other than gaming are carried on the place should not be considered as kept for habitual gaming.

MAGISTRATE'S APPEAL.

N. N. Leicester for the Appellant.

A. V. Winslow for the Crown.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant was convicted of assisting in the management of a common gaming house. The Magistrate in the course of a very careful judgment found that the premises in which gambling took place were occupied by a Chinese Club known as the Cathay Club. He found that it had an essentially private character. Whatever the nature of the institution, there was ample evidence that the appellant assisted in the management. In the circumstances of the case the prosecution were unable to rely on any of the presumptions which arise in certain circumstances under Cap. 30.

In view of these considerations the question that arose was whether the premises were kept for habitual gaming, within the meaning of section 2 of the Ordinance. It is desirable to bear in mind the distinction between the words "kept or used for gaming" and the words "kept for habitual gaming". The evidence showed that on several days between the first and fifteenth days of the Chinese New Year gaming took place. It is possible and even likely that at that auspicious season the principal interest of the members was gaming. It will be remembered that the otherwise Puritanical Statutes issued by Queen Elizabeth for the University of Cambridge permitted card-playing during the similar period between Christmas and the Twelfth-Night. The Magistrate took the view that a club might become a common gaming house seasonally and temporarily. I think that this is looking at the thing too narrowly. By that process of reasoning the most innocent and respectable of clubs would become a common gaming house during a bridge tournament. To find that a place is kept for habitual gaming I think that one should consider its activities for a considerable period. If during that period substantial activities other than gaming are carried on I do not consider that the place can be considered to be kept for habitual gaming.

I do not think that a few days at a special season can be considered a fair sample.

I consider, therefore, that the case was not proved and I allow the appeal.

Appeal Allowed.

The case of Rex v. Singapore British Malay Football Club, (1934) M.L.J. 3 was cited in the Court below. Ed. M.L.J.

RAJOO v. REX.

[C.C.A. (Murray-Aynsley, C.J., Evans and Brown, JJ.) September 20, 1949]

[Singapore — Criminal Appeal No. 18 of 1949]

Penal Code, S. 379 — Theft of a car — Person found in possession of recently stolen property — Direction to jury.

In this case the appellant was convicted of stealing a motor car with one other accused person. The evidence showed that the two men were found in possession of a motor car which has been stolen a few hours before. The appellant in his defence said that as he was driving his taxi his co-accused whom he knew by sight and who was a paid driver who drove many types of cars, stopped